IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE FIFTH DAY OF JULY
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

WRIT PETITION No.12232 OF 1995

Between:

Kothari Venkata Raju

..... PETITIONER

AND

The Secretary to Government,
Social Welfare (F) Department,
Hyderabad, and others.

....RESPONDENTS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR

WRIT PETITION No.12232 OF 1995

O R D E R

The petitioner, a non-tribal, claims that his paternal grandmother occupied an extent of Ac.9-80 cts., in Pedrala village, West Godavari District, which according to the petitioner was earlier located in the Gangole Zamindar estate, which stood subsequently abolished. According to the affidavit, the grandmother of the petitioner occupied of the said land in the year 1939 and the same continued to be in possession of the petitioner's family subsequently.

The above parcel of the land is now admittedly located in a Scheduled Area of the State of Andhra Pradesh, which areas are governed by the provisions of the V Schedule of the Constitution. Pursuant to the authority granted as per para 5 of the V Schedule, the Governor of Andhra Pradesh made Regulations dealing with the governance of those areas. Relevant in the context is Regulation 1 of 1959 as amended by Regulation 1 of 1970.

It appears that the Special Deputy Tahsildar, Tribal Welfare, filed a complaint before the 3rd respondent herein against the petitioner's father under Section 3(2)(a) of Regulation 1 of 1959. The substance of the complaint as it appears from the affidavit filed in support of the writ petition is that the above-mentioned property, which is in the occupation of the petitioner's father belongs to a Tribal, but in possession of the petitioner's father on the basis of a oral lease obtained from the said Tribal. Consequently, the complainant prayed the 3rd respondent to take necessary action under the above-mentioned Regulation to restore the property in dispute to the Tribal.

The petitioner claims that his father filed a counter before the 3rd respondent, in substance indicating that the property was occupied by the petitioner's grandmother and a patta was given by the erstwhile Zamindar. The 3rd respondent by an order dated 21.03.1979 set the petitioner's father exparte and passed a final order of eviction.

Aggrieved by the same, an appeal was carried to the Agent to the Government unsuccessfully and the same was dismissed by an order dated 30th April, 1992. Aggrieved by the same, the petitioner's father carried the matter by way of revision before the Government.

It is stated in the affidavit filed in support of the writ petition that before the Government the petitioner's father filed certain documents in proof of the fact that the land in dispute was in possession of the petitioner's family prior to the commencement of the Regulation 1 of 1959. It is the specific case of the petitioner in the affidavit filed in support of the writ petition that the above-mentioned documents were sent to the Government by Registered Post with Acknowledgment Due on 21.02.1986 and the same were received by the Government on 22.02.1986. The relevant portion of the affidavit reads as follows:

> "..... My father also filed copies of the Amarakam Account of 1361 fasli maintained by the estate zamindar which shows that my father was the pattedar for the schedule land under patta No.13. My father also filed Amarakam Account of 1370 fasli showing him as the pattedar for the schedule land. My father also got filed the Encumbrance Certificate issued by the Sub-Registrar, Polavaram for the period covering from 1904 to 1960 showing that there are no encumbrances on the schedule land. All the above three documents were sent to the Government by Registered Post Ack. Due on 21-2-86 and the acknowledgment shows that the documents was received by the Government on 22-2-1986. Subsequently my father also got sent two more documents to the Government along with written arguments by Registered Post Acknowledgment Due on 20-6-94 in response to the Government notice dt.16-3-94. A copy of the local cess Account of patta No.13 of Pedrala village showing nobody's occupation in respect of the schedule land till 1939. ..."

The averment of the petitioner that the above-mentioned documents were sent by Registered Post with Acknowledgment Due on 21.02.1986 were denied by the State in its counter. However, the learned counsel for the petitioner at the time of arguments produced an acknowledgment of a letter addressed to the 1st respondent herein, which is said to have been received by the 1st respondent on 22.02.1986. By the order dated 07.04.1995 the 1st respondent dismissed the revision of the petitioner, hence the present writ

petition.

Learned counsel for the petitioner Sri A.Rangacharyulu argued that the Regulation 1 of 1959 as amended by Regulation 1 of 1970 is only prospective in operation as held by the Supreme Court in a case reported in ***DEPUTY COLLECTOR V/s. S.VENKATA RAMANAIAH***[1] and it did not effect any transfer of property though located in the Scheduled Areas, if such transfer took place prior to the commencement of Regulation 1 of 1959.

He further submitted that according to his plea in the counter filed before the 3rd respondent that his ancestors had been in possession of the property in dispute even by the date of the commencement coming into force of Regulation 1 of 1959, and therefore, the provisions of Regulation could not have been invoked against the petitioner or his predecessors-in-title.

The learned counsel next submitted that the evidence produced by the petitioner before the revisionary authority i.e. 1st respondent was not at all considered by the 1st respondent, and therefore, the impugned order which came to be passed without considering the relevant material is illegal and liable to be set aside.

In para 10 of the counter filed by the respondents it is admitted that the land in dispute is situated in a village was taken over by Government under the Estates Abolition Act, 1948. However, the counter-affidavit filed on behalf of the official respondents proceeds to say that "…the petitioner would have obtained a ryotwari patta from the Settlement authorities under Regulation 2/70 if the petitioner was having any occupancy right as alleged". The above extracted statement in the counter clearly indicates that the respondents were conscious of the fact that the land in dispute was a part of the estate, which stood abolished and also the fact that the petitioner could have made a claim regarding his right of occupancy under the provisions of the Estates Abolition Act, 1948. As to what are the consequences of the petitioner not obtaining the patta, which requires a separate consideration and will be dealt later?

Para 3 of Regulation 1 of 1959 as originally enacted read as follows :

> **"3. Transfer of immovable property by a member of a Scheduled Tribe.-** (1) Notwithstanding anything contained in any enactment, rule or law in force in the Agency tracts, any transfer of immovable property situated in the Agency tracts by a member of a Scheduled Tribe, shall be absolutely null and void unless made ..
>
> (i) in favour of any other member of a Scheduled Tribe or a registered society as defined in clause (f) of section 2 of the

Andhra Pradesh (Andhra Area) Cooperative Societies Act, 1932 (Act VI of 1932) composed solely of member of the Scheduled Tribes, or

(ii) with the previous sanction of the State Government, or subject to rules made in this behalf, with the previous consent in writing of the Agent or of any prescribed officer.

Explanation : The _expression `transfer' in this section includes a sale in execution of a decree and also a transfer made by a member of a Scheduled Tribe in favour of any other member of a Scheduled Tribe Benami for the benefit of a person who is not a member of a Scheduled Tribe.

2. (a) Where a transfer of immovable property is made in contravention of sub-section (1), the Agent, the Agency Divisional Officer or any other prescribed officer may, on application by any one interested, or on information given in writing by a public servant, or *suo-motu* decree ejectment against any person in possession of the property claiming under the transfer, after due notice to him in the manner prescribed and may restore it to the transfer or his heirs.

(b) If the transferor or his heirs are not willing to take back the property or where their whereabouts are not known the Agent, the Agency Divisional Officer or prescribed Officer, as the case may be, may order the assignment or sale of the property to any other member of a Scheduled Tribe or a registered society as defined in clause (f) of Section 2 of (the Andhra Pradesh (Andhra Area) Cooperative Societies Act, 1932 (Act VI of 1932) composed solely of members of the Scheduled Tribes, or otherwise dispose of it, as if it was a property at the disposal of the State Government.

3. (a) subject to such conditions as may be prescribed, an appeal against any decree or order under sub-section (2), shall lie within such time as may be prescribed.

(i) if the decree or order was passed by the Agent, to the State Government;

(ii) if the decree or order was passed by the Agency Divisional Officer, to the agent; and

(iii) if the decree or order was passed by any other officer, to the Agency Divisional Officer or Agent, as may be prescribed.

(b) The appellate authority may entertain an appeal on sufficient cause being shown after the expiry of the time limit prescribed therefore.

which was substituted by Regulation 1 of 1970 which reads as follows :

3. Transfer of immovable property by a member of a Scheduled Tribe :-

(1) (a) Notwithstanding anything in any enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts by a person. Whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Cooperative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes.

(b) Until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a person who is not a member of Scheduled Tribe, shall be presumed to have been acquired by person or his predecessor in possession through a transfer made to him by a member of a Scheduled Tribe.

(c) Where a person intending to sell his land is not able to effect such sale, by reason of the fact that no member of a Scheduled Tribe is willing to purchase the land or is willing to purchase the land on the terms offered by such person, then such person may apply to the Agent, the Agency Divisional Officer or any other prescribed officer for the acquisition of such land by the State Government, and the Agent. Agency Divisional Officer or the prescribed officer, as the case may be, may by order, take over such land on payment of compensation in accordance with the principles specified in Section 10 of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 (Act X of 1961), and such land shall thereupon vest in the State government free from all encumbrances and shall be disposed of in favour of members of the Scheduled Tribes or a society registered or deemed to be registered under the Andhra Pradesh Cooperative Societies Act, 1964 (Act 7 of 1964) composed solely of members of the Scheduled Tribes or in such other manner and subject to such conditions as may be prescribed;

(2) (a) Where a transfer of immovable property is made in contravention of sub-section (1), the Agent, the Agency Divisional Officer or any other prescribed Officer may, on application by any one interested, or on information given in writing by a public servant, or *suo motu* decree ejectment against any person in possession of the property claiming under the transfer, after due notice to him in the manner prescribed and may restore it to the transfer or his heirs.

(b) If the transferer or his heirs are not willing to take back the property or where their whereabouts are not known, the Agent, the Agency Divisional Officer or prescribed officer, as the case may be, may order the assignment or sale of the property to any other member of a Scheduled Tribe or a society registered or deemed to be registered under any law relating to Cooperative Societies for the time being in force in the State composed solely of members of the Scheduled Tribes, or otherwise dispose of it, as if it was a property at

the disposal of State Government.

(3) (a) Subject to such conditions as may be prescribed, an appeal against any decree or order under subsection (2), shall lie within such times as may be prescribed -

(i) if the decree or order was passed by the Agent, to the State Government;

(ii) if the decree or order was passed by the Agency Divisional Officer, to the Agent; and

(iii) if the decree or order was passed by any other officer, to the Agency Divisional Officer or Agent, as may be prescribed

(b) The appellate authority may entertain an appeal on sufficient cause being shown after the expiry of the time limit prescribed therefor.

It can be seen from the above that prior to the amendment in 1970, the regulation recognsied transfers made with the previous consent or the sanction of the State Government or the agent or of any prescribed officer to be valid and exceptions to the general rule contained in para 3 that any transfer of immoveable property from a trial from a member of a scheduled tribe to any person other than specified in para 3. By Regulation 1 of 1970, clause (b) was introduced which created a rule of evidence that until the contrary is proved in person who is not a member of a Scheduled Tribe who is in possession of the immoveable property situated in the agency tracts is deemed to have acquired such possession through a transfer made by a member of the Scheduled Tribe.

As already noticed, both the provisions were held prospective in operation by the Supreme Court in ***DEPUTY COLLECTOR'*s case (1 supra).**

Transfer of immoveable property prior to the introduction of the Regulation 1 of 1959 in the scheduled areas was not absolutely prohibited as is done under Regulation 1 of 1959. 1959 Regulation was preceded by the Madras Act 1 of 1970 which Act only regulated the transfer of immoveable property in the agency tracts as stipulated under the said Act, that any transfer of immoveable property was required to be with the prior consent of the agent. It is also not in dispute that Zamindari Estates existed even in agency areas which are now governed by the V Schedule in the State of Andhra Pradesh and the law insofar as it pertains to the lands in those estates is the same as the law that is applicable to the rest of the territory of Andhra Pradesh which is contained in the Estate Lands Act, 1905 and also the Estates Abolition Act, 1948.

The petitioner's case from the beginning appears to be that his ancestors occupied the land in question prior to the coming into force of Regulation 1 of 1959 and more specifically some time around 1938-39 and also a patta was granted to him by the erstwhile Estate holder. Though he did not admittedly adduce any evidence either before the primary authority or the 1st appellate authority, it appears from the record as narrated above, that he did produced certain documents in support of his claim that he was in possession of the property prior to the commencement of the Regulation No.1 of 1959 and also a patta was granted by the estate holder prior to the abolition of the estate. Unfortunately, such material was not considered by the revisionary authority - 1st respondent herein.

The learned counsel for the 4th respondent Sri Ramalingeswara Rao argued that in view of the fact that the petitioner or his predecessors in title never applied for a patta consequent upon the abolition of the estate in which the disputed lands fell, all lands which form part of the estate on abolition stood vested in the State and therefore the petitioner is debarred from raising a claim that he or his predecessors in title have been in possession of the property continuously from a period anterior to the date of the commencement of the Regulation 1 of 1959.

No doubt by virtue of the operation of Section 3 of the Estates Abolition Act, the entire estate except certain specified items under section 3(b) of the said Act, stands transferred to the government and vest in them free of all encumbrances. While Section 3(d) enable the State to take possession of the estate, the proviso thereto specifically mandates that the State should not dispossess any person of any land in the estate in respect of which they consider prima facie the occupant is entitled for a Ryotwari patta. Therefore, the submission of the learned counsel for the respondent that in the absence of a patta granted under the provisions of the Estate Abolitions act, the petitioner cannot be heard to say that he is in possession of the lands in dispute even by the date of the commencement of the Regualtion 1 of 1959, in my view, cannot be accepted.

The question in this case is not whether the petitioner is entitled for a ryotwari patta consequent upon the abolition of the estate or law. The question is whether the petitioner or his predecessors in title were in fact in possession of the disputed piece of land on the date of the commencement of Regulation 1 of 1959. The said question is a question of fact which could only be determined on an appreciation of all the necessary evidence produced before the 1st respondent. In view of my conclusion that the petitioner did in fact produce before the 1st respondent certain documents, the details of which are already extracted earlier and the non-consideration of those documents, in my view, vitiate the impugned order and the same is therefore liable to be set aside and the matter is remitted back to the 1st

respondent to consider the case and dispose of the same in accordance with law after examining the various documents referred to earlier. In view of the pendency of the litigation for a period of almost three decades, I am of the opinion that the enquiry should be concluded within a period of eight weeks from the date of the receipt of a copy of this order.

The writ petition is disposed of accordingly.

JUSTICE J.CHELAMESWAR

05th JULY, 2006
PGS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR

WRIT PETITION No.12232 OF 1995

05TH JULY, 2006

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[1] AIR 1996 S.C. 224